

**IT IS SO ORDERED.**

**Dated: 02 July, 2010 03:05 PM**

  
RANDOLPH BAXTER  
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<u>In re</u>	)	<b>Chapter 11</b>
	)	
<b>Kiebler Recreation, LLC</b>	)	<b>Case No. 10-15099</b>
	)	
<b>Debtor.</b>	)	<b>Judge Baxter</b>
	)	

**AGREED THIRD INTERIM ORDER AUTHORIZING THE USE OF  
CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION**

Upon the motion of Kiebler Recreation, LLC (the “Debtor”), debtor and debtor-in-possession in the above-captioned chapter 11 case, for the entry of interim and final orders authorizing the Debtor on an interim and final basis to use cash collateral (“Cash Collateral”), as such term is defined in section 363(a) of title 11 of the United States Code, (the "Bankruptcy Code"), in which The Huntington National Bank (“Huntington”) and PNC Bank (“PNC” and with Huntington, the “Banks”) may assert an interest and to provide adequate protection to the Banks, all as more fully set forth herein, and requesting that this Court schedule a final hearing (the “Final Hearing”) and approve notice with respect thereto (the “Motion”); and the Court

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having considered the Motion; and a hearing to consider approval of the interim relief requested by the Motion having been held and concluded; and upon all of the pleadings filed with the Court and all of the proceedings held before this Court; and all capitalized terms used herein but not defined shall have the meaning given them in the Motion; and it appearing that the notice given to parties of the Motion was good and sufficient under the circumstances and that no other or further notice need be given, other than as set forth herein with respect to the Final Hearing; and after due deliberation and consideration and good and sufficient cause having been shown, it is hereby,

ORDERED that the Motion is granted on an interim basis, to the extent provided herein; and it is further

ORDERED that the Debtor is authorized to use Cash Collateral to operate the Debtor's business in the ordinary course, including to pay its actual, necessary, ordinary course operating expenses, from the date of this Order through August 13, 2010, pursuant to section 363(c)(2) of the Bankruptcy Code; provided that the Debtor is authorized to use Cash Collateral only for the payment of, or reimbursement for permitted "Cash Disbursements," on a cumulative basis, as contained in the budget attached hereto as Exhibit A (the "Budget"), through August 13, 2010; and it is further

ORDERED that notwithstanding anything contrary contained in the Budget, Huntington does not consent at this time to payment of any "Accrued Expenses" contained in the Budget or to any carveout for the payment of professional fees, with the exception of property and use, sale and occupancy taxes, leaseholder adequate protection payments, and unpaid fees of the Clerk of the Bankruptcy Court and the U.S. Trustee pursuant to 28 U.S.C. 1930(a) and any interest that has accrued thereon; and it is further

ORDERED that on or before the close of business on Monday of each week, the Debtor will provide the Banks with a comparison of the previous week's budget showing the actual receipts and disbursements for that week; and it is further

ORDERED that, pursuant to the prepetition loan documents between the Debtor (or its predecessors in interest) and Huntington (or its predecessors in interest) filed in the above-captioned chapter 11 case on June 11, 2010 as docket # 68 (the "Prepetition Loan Documents"), Huntington asserts an interest in certain real and personal property of the Debtor in which liens were granted to Huntington (the "Prepetition Collateral") and, as adequate protection for, and to the extent of any diminution in the value of Prepetition Collateral resulting from the use of the Cash Collateral pursuant to section 363(c) of the Bankruptcy Code, and the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code, pursuant to sections 361 and 363(e) of the Bankruptcy Code, upon entry of this Agreed Order,

1. The Banks will be granted post-petition security interests in, and liens upon, all of the categories and types of collateral in which they held security interests as of the Petition Date, but such post-petition security interests shall only be to the same extent, and have the same priority, as their respective security interests as of the Petition Date (the "Replacement Liens"). Prior to the expiration of the time periods set forth in paragraph 3, below, all security interests to be granted to the Banks hereunder as adequate protection shall be without prejudice to the right of any party with standing, including but not limited to the Debtor, to assert any claims against the Banks or their security interests; and
2. The Debtor's prepetition obligations to Huntington (the "Prepetition Obligations") secured by liens on the Prepetition Collateral (the "Prepetition Liens") pursuant to the Prepetition Loan Documents shall constitute legal, valid, binding obligations of the Debtor, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code) and the Prepetition Liens and Replacement Liens shall be valid, binding, perfected, enforceable first priority liens on and security interests in the Prepetition Collateral for the benefit of Huntington unless:
  - (i) a party in interest has timely filed an adversary proceeding subject to the limitations contained herein, including, inter alia, in paragraph 3 challenging the validity, enforceability, priority or

extent of the Prepetition Obligations or the liens of Huntington the Prepetition Collateral, or the propriety of the repayment of the Prepetition Obligations, and

- (ii) there is a final order in favor of the plaintiff sustaining any such challenge or claim in any such timely filed adversary proceeding.
- 3. To be timely, an adversary proceeding commenced under paragraph 2 above must be commenced by the later of
  - (i) the date that is forty-seven (47) days after the date of entry of this Agreed Order (the "Investigation Period") with respect to any challenge relating to the Prepetition Loan Documents, provided, however, that if the Case is converted to a case under Chapter 7 of the Bankruptcy Code before the expiration of the Investigation Period, a trustee in such chapter 7 case shall have forty-five (45) days from the date of acceptance of the appointment as trustee to file said adversary proceeding; or
  - (ii) such later date as has been agreed to, in writing, by Huntington in respect of challenges that may be initiated against Huntington in Huntington's sole discretion.
- 4. If no such adversary proceeding is timely filed,
  - (i) the Prepetition Liens shall be deemed to be legal, valid, binding, perfected and of the priority described in paragraph 2; and
  - (ii) the Prepetition Obligations and the Prepetition Liens shall not be subject to any other or further challenge by any party in interest, and any such party in interest shall be enjoined from seeking to exercise the rights of the Debtor's estate, including, without limitation, any successor thereto (including, without limitation, any estate representative or a chapter 7 or 11 trustee appointed or elected for the Debtor). Notwithstanding the foregoing, nothing contained herein shall limit the rights of any party in interest with standing to seek the recharacterization or subordination of the Prepetition Obligations and Prepetition Liens or to assert any claims, causes of action or objection to claim against Huntington.
- 5. If any such adversary proceeding or contested matter is timely filed, the stipulations and admissions contained in paragraph 3 of this Agreed Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any person or entity, except to the extent that such findings and admissions were expressly challenged in such adversary proceeding. Nothing in this Agreed Order vests or confers on any Person (as defined in the Bankruptcy Code), standing or authority to pursue any cause of action belonging to the Debtor

or its estate, including, without limitation, Claims and Defenses with respect to the Prepetition Liens or the Prepetition Obligations.

6. Subject to the limitations set forth above, in the event that the adequate protection granted in the above fails to protect the interests of the Banks in the Cash Collateral, the Banks will be granted superpriority administrative claims which will have priority of the kind specified in Bankruptcy Code § 507(b) over any and all administrative expenses specified in Bankruptcy Code § 507(a)(2), but expressly subject to application for such administrative claim and approval by the Court.

and it is further

ORDERED that for purposes of this Agreed Order, “Cash Collateral” shall consist of all cash collateral as defined in section 363(a) of the Bankruptcy Code in which Huntington has a security interest, including deposits subject to setoff and all other cash proceeds arising from the sale, lease or other disposition or conversion of Prepetition Collateral; and it is further

ORDERED that should it subsequently be determined that any provision herein abrogates any provision of the Bankruptcy Code or the Bankruptcy Rules, such provision shall be stricken as *void ab initio*; and it is further

ORDERED that nothing contained herein shall be deemed a waiver by Huntington of any rights or objection it may have to use of Cash Collateral beyond August 13, 2010 or the terms of any order relating thereto; and it is further

ORDERED that the entry of this Agreed Order does not constitute a waiver by, estoppel or otherwise limit any party in interest from seeking or opposing additional rights, protections or benefits in a subsequent stipulation, motion, objection or order. The entry of this Agreed Order also does not constitute a waiver by Banks of any right to file a motion for relief from stay, to limit or terminate the use of cash collateral, for additional or different adequate protection, including adequate protection payments, or any other appropriate motion or adversary proceeding. Except as expressly provided to the contrary, the rights of the Debtor, the Official

Committee of Unsecured Creditors appointed in this case (the "Committee"), and any other party with standing to oppose or defend any such motion or adversary proceeding, or to argue for the limitation or cessation of any adequate protection payments are explicitly reserved.

ORDERED that the Final Hearing, which Final Hearing shall be an evidentiary hearing, shall be held on August 24, 2010, at 10  : 30    a.m. at the United States Bankruptcy Court, Howard M. Metzenbaum U.S. Courthouse, 201 Superior Ave., Cleveland, Ohio 44114-1235, Room 220, before the Honorable Randolph Baxter at the United States Bankruptcy Court, Northern District of Ohio. Any objections to the use of Cash Collateral on a final basis shall be filed with the Court no later than seven days prior to the Final Hearing, or on or before August 17, 2010, and Huntington's objection to the use of Cash Collateral [docket # 96] shall be carried over to that hearing. The Debtor shall serve notice of the entry of this Order and copies of this Order on (i) the United States Trustee, (ii) the Banks and/or their counsel, (iii) the Committee, and (iv) all parties that have requested notice in this case, which shall constitute due and sufficient notice of the Final Hearing on the Debtor's request for final authorization to use Cash Collateral for the purpose of Bankruptcy Rule 4001.

**IT IS SO ORDERED.**

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Respectfully submitted by:

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Peek'n Peak Resort  
13- Week Budget

	Week Ending												13-Week Total
	7/7/10	7/14/10	7/21/10	7/28/10	8/4/10	8/11/10	8/18/10	8/25/10	9/1/10	9/8/10	9/15/10	9/22/10	9/29/10
<b>Cash Receipts</b>													
Ski	0	0	0	0	0	0	0	0	0	0	0	0	0
Golf	92,500	110,880	113,850	118,800	133,650	103,950	103,950	94,050	82,500	82,500	82,500	74,250	66,000
Hotel	60,305	81,050	83,221	86,839	97,694	75,984	75,984	68,748	60,305	60,305	60,305	54,275	48,244
Fairways Condominiums	9,695	13,030	13,379	13,961	15,706	12,216	12,216	11,052	9,695	9,695	9,695	8,726	7,756
Food & Beverage	82,125	110,376	113,333	118,260	133,043	103,478	103,478	93,623	82,125	82,125	82,125	73,913	65,700
Property Management	15,375	20,664	21,218	22,140	24,908	19,373	19,373	17,528	15,375	15,375	15,375	13,838	12,300
	260,000	336,000	345,000	360,000	405,000	315,000	315,000	285,000	250,000	250,000	250,000	225,000	200,000
<b>Cash Disbursements</b>													
<i>Personnel</i>													
Salaries & Wages	115,000	140,000	120,000	120,000	120,000	120,000	120,000	115,000	110,000	105,000	105,000	105,000	105,000
Dental, HRA, Life & Admin	3,000	3,000	3,000	3,000	6,000	3,000	3,000	3,000	6,000	3,000	3,000	3,000	6,000
Health Insurance	118,000	143,000	123,000	168,000	126,000	123,000	123,000	163,000	116,000	108,000	108,000	108,000	156,000
<i>Operations</i>													
Food	55,000	40,000	40,000	40,000	40,000	40,000	35,000	35,000	35,000	30,000	30,000	25,000	25,000
Beverage - Beer / Liquor	5,000	5,000	5,000	5,000	4,000	4,000	3,000	3,000	3,000	2,000	2,000	2,000	2,000
Purchases for Resale	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	1,500	1,500
Golf Supplies	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	1,000	1,000
Golf Merchandise Reimbursement	5,000	5,000	5,000	5,000	5,000	4,000	4,000	4,000	3,000	3,000	3,000	2,500	2,500
Vehicle & Equipment Leases	633		1,000	531	633			1,000	1,164			1,164	1,164
Spa Supplies													3,000
Fuel Purchases	3,000	3,000	6,000	3,000	3,000	3,000	6,000	3,000	3,000	3,000	6,000	3,000	48,000
Repairs & Maintenance	5,000	10,000	5,000	10,000	5,000	10,000	5,000	10,000	5,000	10,000	5,000	5,000	90,000
Sales & Marketing	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
	82,633	72,000	71,000	72,531	66,633	70,000	62,000	65,000	59,164	57,000	55,000	45,000	47,164
<i>General &amp; Administrative</i>													
Bank & CC Charges	15,000				19,600				21,750			49,400	
General Business Insurance					50,000							20,000	
Worker's Comp Insurance				20,000				20,000			1,000		
Postage		1,000					1,000						
Office Equip. Leases	483	1,222	250	250	291	483	250	250	291	483	250	250	250
Office Supplies	250	250	250	250	250	250	250	250	250	250	250	250	250
Information Technology	3,000	5,000	1,000	7,500	500	1,000		4,000	500	1,000	500	4,000	
Travel & Mileage	1,000	200	200	200	1,000	200	200	200	200	1,000	200	200	200
	19,733	7,672	1,450	27,950	71,641	1,933	1,450	24,450	22,991	2,733	1,950	73,850	450
<i>Utilities</i>													
Cable & Internet	0	0	3,500	5,500	0	0	3,500	5,500	0	0	0	3,500	5,500
Electric	55,000	0	0	1,500	60,000	0	0	0	1,500	55,000	0	0	1,500
Natural Gas	2,500	0	0	0	6,000	2,500	0	0	5,500	2,500	0	0	5,000
Telephone	2,500	0	0	750	1,250	2,500	0	750	1,250	2,500	0	0	11,500
Security System	0	0	0	0	0	0	0	0	0	0	0	0	0
Sewage System					2,500				2,500				5,000
Trash Disposal	2,000	0	0	0	2,000	0	0	0	2,000	0	0	3,500	13,000
	62,000	0	3,500	7,750	71,750	5,000	3,500	6,250	12,750	60,000	0	3,500	249,000
<i>Total Cash Disbursements</i>	251,366	222,672	197,200	272,356	300,149	197,433	188,200	255,575	204,530	197,733	164,950	228,600	210,114
<b>Net Operating Cash Flow</b>	8,634	113,328	147,800	87,644	104,851	117,567	126,800	29,425	45,470	52,267	85,050	(3,600)	(10,114)

Peek'n Peak Resort  
13- Week Budget

	7/7/10	7/14/10	7/21/10	7/28/10	8/4/10	8/11/10	8/18/10	8/25/10	9/1/10	9/8/10	9/15/10	9/22/10	9/29/10	13-Week Total
<i>Debit Service</i>														
Term Loans														
HNB - (1.44 Mill.)														0
HNB - Ridgeview														0
HNB - (4.19 Mill.)														0
HNB - (6.81 Mill.)														0
PNC (Fairways)														0
Capital Leases														
GE Capital (Shuttles)			795		1,511			795	1,511			795		3,022
HNB (2 Chev Cargo Vans)					1,822				1,822				1,822	2,385
GMAC (2)					25,611									5,466
Leasenet		25,764				25,764								25,611
Textron Leases	11,260				11,260									77,292
Tygris Lease	11,260	25,764	795	0	40,204	25,764	0	795	3,333	25,764	0	795	1,822	33,780
										37,024				147,556
<b>Cash from Operations</b>	(2,626)	87,564	147,005	87,644	64,647	91,803	126,800	28,630	42,137	15,243	85,050	(4,395)	(11,936)	757,566
<b>Accrued Expenses</b>														
<i>General &amp; Administrative</i>														
Debtor Legal Fees	16,000	16,000	12,000	12,000	12,000	12,000	10,000	10,000	10,000	10,000	8,000	8,000	8,000	144,000
Creditor Comm Legal Fees	4,000	4,000	3,000	3,000	3,000	3,000	2,500	2,500	2,500	2,500	2,000	2,000	2,000	36,000
U. S. Trustee Fees	20,000	20,000	15,000	15,000	20,000	15,000	12,500	12,500	17,500	12,500	10,000	10,000	10,000	10,000
<i>Property Taxes</i>														
Chautauqua County Taxes	4,500	4,500	4,500	4,500	4,500	4,500	4,500	4,500	4,500	4,500	4,500	4,500	4,500	58,500
Clymer School Taxes	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	130,000
	14,500	14,500	14,500	14,500	14,500	14,500	14,500	14,500	14,500	14,500	14,500	14,500	14,500	188,500
<i>Escrowed Funds</i>														
Condo Rental Program	27,100	27,100	27,100	27,100	24,900	24,900	24,900	24,900	9,600	9,600	9,600	9,500	9,500	255,800
Sales / Use Tax	13,563	18,228	18,716	34,530	21,971	17,089	17,089	30,461	13,563	13,563	13,563	12,206	10,850	235,391
Occupancy Tax	5,250	5,250	5,250	5,250	4,750	4,750	4,750	4,750	3,250	3,250	3,250	3,000	3,000	55,750
	45,913	50,578	51,066	66,880	51,621	46,739	46,739	60,111	26,413	26,413	26,413	24,706	23,350	546,941
<b>Total / Accrued Expenses</b>	80,413	85,078	80,566	96,380	86,121	76,239	73,739	87,111	58,413	53,413	50,913	49,206	47,850	925,441
<b>Net Income</b>	(83,039)	2,486	66,439	(8,736)	(21,474)	15,564	53,061	(58,481)	(16,276)	(38,170)	34,138	(53,601)	(59,786)	(167,875)
<b>Cash Reconciliation</b>														
Beginning Cash Balance	3,947	1,321	88,885	220,140	34,347	98,994	190,797	317,597	90,017	132,154	147,397	232,447	228,052	60,000
Cash from Operations	(2,626)	87,564	147,005	87,644	64,647	91,803	126,800	28,630	42,137	15,243	85,050	(4,395)	(11,936)	757,566
Accrued Expense Payments														
Debtor Legal Fees				56,000				44,000					44,000	144,000
Creditor Comm Legal Fees				14,000				11,000					11,000	36,000
U. S. Trustee Fees				0				5,000					5,000	10,000
Chautauqua County Taxes														0
Clymer School Taxes														0
Condo Rental Program				118,400				109,600					57,800	285,800
Sales / Use Tax			15,750	85,037				86,610					63,744	235,391
Occupancy Tax	0	0	15,750	273,437	0	0	0	256,210	0	0	0	0	181,544	15,750
														726,941
<b>Ending Cash Balance</b>	1,321	88,885	220,140	34,347	98,994	190,797	317,597	90,017	132,154	147,397	232,447	228,052	34,573	90,626